

REFINING REVITALIZATION

SEC. 1. SHORT TITLE.

This subtitle may be cited as the `Oklahoma Refinery Revitalization Act'.

SEC. 2. FINDINGS.

The House of Representatives of the State of Oklahoma finds the following:

(1) There has not been a new petroleum refinery constructed in the United States since 1976. It is well known that the number of refineries located in the United States has declined rapidly since the early 1980s. Between 1981 and 2005 the number of oil refineries fell from 315 to 144. The surviving facilities have improved their efficiency to meet demand, but are currently operating at 94% capacity. To meet a growing demand, refiners have increased refining capacity by 28% since the mid-1990s.

It should be noted that approximately 50 percent of the petroleum in the United States is used for the production of gasoline. With a growing demand, suppliers of refined petroleum products are forced to meet this demand with imported product. The amount of imported product is growing and is currently 10% of domestic consumption. Unfortunately these foreign refiners cannot produce the volume of product needed due to stringent United States gasoline and diesel fuel specifications.

The federal government states that by 2025, nationwide gasoline consumption is projected to rise from 8,900,000 barrels per day to 12,900,000 barrels per day. Diesel fuel, jet fuel and home heating oil are other refined products experiencing an increased demand due to greater consumption.

(2) There are currently 5 refineries operating in the State of Oklahoma. For 2005, it is estimated that the payroll at these refineries will be \$157 million and the operating expenses will total \$124 million. It is also expected that in 2005 the capital expenditures at these facilities will be an estimated \$136 million. The estimated total expenditures by these refineries in Oklahoma for 2005 are \$417 million. This figure represents a 58% increase since 2002.

(3) A commonly cited figure for the development and construction of a refinery is \$2 billion. With such a large price tag, incentive programs used to encourage growth in the domestic refining industry are an option that warrants consideration.

(4) The refining industry is subject to significant State and Federal environmental regulations and is facing compliance with several new Clean Air Act (CAA) requirements over the next decade. These new CAA requirements will benefit the environment and the people of the State of

Oklahoma, but will also require substantial capital investment and additional government permits.

(6) Barriers to investment, burdensome regulation, the cost of upgrading existing facilities and high operating costs have caused refining jobs to leave the state.

(7) More regulatory certainty for refinery owners is needed to stimulate investment in increased refinery capacity in Oklahoma. This will include procedures for Federal, State, and local regulatory approvals, which need to be streamlined.

SEC. 3. PURPOSE.

The purpose of the Oklahoma Refinery Revitalization Act (Act) is to encourage the expansion of the refining capacity within the State of Oklahoma by providing incentives for growth and by detailing an accelerated review and approval process of all regulatory approvals for certain idle refineries. Additionally, the Act seeks to provide legal and technical assistance to State agencies, which may have resources that are inadequate to meet such permit review demands.

SEC. 4. MEMORANDUM OF UNDERSTANDING.

(1) In General - Not later than 90 days after the date of enactment of this Act, the Executive Director of the Oklahoma Department of Environmental Quality (Director) shall enter into a memorandum of understanding (MOU) with the Administrator of the United State Environmental Protection Agency (Administrator) for the purposes of this Act. The MOU is provided for in the Energy Policy Act of 2005, H.R. 6. The Director shall designate a senior official responsible for, and dedicate sufficient other staff and resources to ensure, full implementation of the purposes of this Act and any regulations enacted pursuant to this Act as allowed by the Federal legislation.

(2) Additional Signatories - The Director, and the appropriate representative of any Indian Tribe, with jurisdiction over a potential refinery site, may be signatories to the memorandum of understanding under this section.

SEC. 5. ENVIRONMENTAL PERMITTING ASSISTANCE.

Not later than 30 days after the Director and the Administrator become signatories to the MOU under section 4 of this Act –

(1) the Director shall designate one or more employees of the Department of Environmental Quality (DEQ) with expertise relating to the siting and operation of refineries to provide legal and technical assistance to any permit applicants; and

(2) In General- The Director shall request that the Administrator of the United States Environmental Agency (Administrator) and the State of Oklahoma enter into a refinery permitting cooperative agreement, under which each party to the agreement identifies steps, including timelines, that it will take to streamline the consideration of State and Federal environmental permits for a new refinery.

(b) Authority Under Agreement- The Director shall be authorized to—

(i) accept from a refiner a consolidated application for all permits required from the Environmental Protection Agency and the DEQ, to the extent consistent with other applicable law;

(ii) enter into memoranda of agreement with other State and Federal agencies to coordinate consideration of refinery applications and permits among State and Federal agencies; and

(iii) enter into memoranda of agreement with State and Federal agencies, under which State and Federal review of refinery permit applications will be coordinated and concurrently considered, to the extent practicable.

(c) State Assistance- The Director is authorized to request financial assistance from the Federal government to facilitate the hiring of additional personnel with expertise in fields relevant to consideration of refinery permits.

(d) Other Assistance- The Director is authorized to request that the Federal government provide technical, legal, or other assistance to the State to facilitate their review of applications to build new refineries.

(3) The Director shall designate, to provide legal and technical assistance for permit applicants, one or more employees of the DEQ with expertise on regulatory issues, relating to the siting and operation of refineries, with respect to each of—

(i) the Clean Air Act (42 U.S.C. 7401 et seq.);

(ii) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(iii) the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(iv) the Comprehensive Environmental Response Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

(v) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

(vi) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

(vii) the National Historic Preservation Act (16 U.S.C. 470 et seq.); and

(viii) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

SEC. 6. COORDINATION AND EXPEDITIOUS REVIEW OF PERMITTING PROCESS.

(a) The DEQ, as Lead Agency- Upon written request of a prospective applicant for authorization for a refinery facility in the State of Oklahoma, the DEQ shall act as the lead State agency for the purposes of coordinating all applicable State/Federal authorizations and environmental reviews of the refining facility. To the maximum extent practicable under applicable State and Federal law, the Director shall coordinate this State/Federal authorization and review process with any Federal, State, Indian Tribes and local agencies responsible for conducting any separate permitting and environmental reviews of the refining facility.

(b) Schedule-

(1) IN GENERAL- The Director, in coordination with the agencies with authority over State authorizations and, as appropriate, with Federal, Indian Tribes and local agencies that are willing to coordinate their separate permitting and environmental reviews with the State authorizations and environmental reviews, shall establish a schedule with prompt and binding intermediate and ultimate deadlines for the review of, and State authorization decisions relating to, refinery facility siting and operation.

(2) PREAPPLICATION PROCESS- Prior to establishing the schedule, the Secretary shall provide an expeditious preapplication mechanism for applicants to confer with the agencies involved and to have each agency communicate to the prospective applicant within 60 days concerning--

(A) the likelihood of approval for a potential refinery facility; and

(B) key issues of concern to the agencies and local community.

(3) SCHEDULE- The Director shall consider the preapplication findings under paragraph (2) in setting the schedule and shall ensure that once an application has been submitted with such information as the Director considers necessary, all permit decisions and related environmental reviews under all applicable State/Federal laws shall be completed within 6 months or, where circumstances require otherwise, as soon as thereafter practicable.

(c) Consolidated Environmental Review-

(1) LEAD AGENCY- In carrying out its role as the lead State agency for environmental review, the DEQ shall coordinate all applicable State/Federal actions for complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and shall be responsible for preparing any environmental impact statement required or such other form of environmental review as is required.

(2) CONSOLIDATION OF STATEMENTS- In carrying out paragraph (1), if the United States Environmental Protection Agency determines an environmental impact statement is required, the DEQ will work with that Federal Agency to prepare a single environmental impact statement, which shall consolidate the environmental reviews of all State and Federal

agencies considering any aspect of the project covered by the environmental impact statement.

(d) Other Agencies- Each State agency considering an aspect of the siting or operation of a refinery facility in the State of Oklahoma shall cooperate with the DEQ and comply with the deadlines established by the DEQ in the preparation of any environmental impact statement or such other form of review as is required.

(e) Exclusive Record- The DEQ shall, with the cooperation of State and Federal administrative agencies and officials, maintain a complete consolidated record of all decisions made or actions taken by the DEQ or by a State administrative agency or officer acting under delegated Federal authority (or by a Federal administrative agency) with respect to the siting or operation of a refinery facility in the state. Such record shall be the exclusive record for any State administrative proceeding that is an appeal or review of any such decision made or action taken.

(f) Appeals- In the event any agency has denied a State authorization required for a refinery facility in the state, or has failed to act by a deadline established by the Director pursuant to subsection (b) for deciding whether to issue the State authorization, the applicant may file an appeal with the Director. Based on the record maintained under subsection (e), and in consultation with the affected agency, the Director may then either issue the necessary State authorization with appropriate conditions, or deny the appeal. The Director shall issue a decision within 60 days after the filing of the appeal. In making a decision under this subsection, the Director shall comply with applicable requirements of State and Federal law, including each of the laws referred to in section 5(3)(i) through (viii). Any judicial appeal of the Director's decision shall be to an Oklahoma court of competent jurisdiction.

(g) Conforming Regulations- Not later than 6 months after the date of enactment of this Act, the Director shall issue any regulations necessary to implement this subtitle.

SEC. 7. COMPLIANCE WITH ALL ENVIRONMENTAL REGULATIONS REQUIRED.

Nothing in this Act shall be construed to waive the applicability of environmental laws and regulations to any refinery facility.

SEC. 8. TEMPORARY EXPENSING FOR EQUIPMENT USED IN REFINING OF LIQUID FUELS. ELECTION TO EXPENSE CERTAIN REFINERIES.

(a) Treatment as Expenses- A taxpayer may elect to treat 50 percent of the cost of any qualified refinery property as an expense which is not chargeable to capital

account. Any cost so treated shall be allowed as a deduction for the year in which said qualified refinery property is acquired.

(b) Election-

`(1) IN GENERAL- An election under this section for any taxable year shall be made on the taxpayer's return of the tax imposed by this chapter for the taxable year. Such election shall be made in such manner as the Director may by regulations prescribe.

`(2) ELECTION IRREVOCABLE- Any election made under this section may not be revoked except with the consent of the Director.

(c) Qualified Refinery Property-

`(1) IN GENERAL- The term `qualified refinery property' means any portion of a qualified refinery--

- (A) the original use of which commences with the taxpayer,
- (B) which is placed in service by the taxpayer after the date of the enactment of this section and before **January 1, 2012**,
- (C) in the case any portion of a qualified refinery (other than a qualified refinery which is separate from any existing refinery), which meets the requirements of subsection (e),
- (D) which meets all applicable environmental laws in effect on the date such portion was placed in service,
- (E) no written binding contract for the construction of which was in effect on or before **June 14, 2005** , and
- (F)(i) the construction of which is subject to a written binding construction contract entered into before **January 1, 2008**,
- (ii) which is placed in service before January 1, 2008, or
- (iii) in the case of self-constructed property, the construction of which began after **June 14, 2005** , and before **January 1, 2008**.

(2) SPECIAL RULE FOR SALE-LEASEBACKS- For purposes of paragraph (1)(A), if property is--

- `(A) originally placed in service after the date of the enactment of this section by a person, and
- `(B) sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in subparagraph (B).

(3) EFFECT OF WAIVER UNDER CLEAN AIR ACT - A waiver under the Clean Air Act shall not be taken into account in determining whether the requirements of paragraph (1)(D) are met.

(d) Qualified Refinery- For purposes of this section, the term `qualified refinery' means any refinery located in the State of Oklahoma which is designed to serve the primary purpose of processing liquid fuel from crude oil or qualified fuels.

(e) Production Capacity- The requirements of this subsection are met if the portion of the qualified refinery--

- (1) enables the existing qualified refinery to increase total volume output (determined without regard to asphalt or lube oil) by 5 percent or more on an average daily basis, or
- (2) enables the existing qualified refinery to process qualified fuels at a rate which is equal to or greater than 25 percent of the total throughput of such qualified refinery on an average daily basis.
- (f) Ineligible Refinery Property - No deduction shall be allowed under subsection (a) for any qualified refinery property—
 - (1) the primary purpose of which is for use as a topping plant, asphalt plant, lube oil facility, crude or product terminal, or blending facility, or
 - (2) which is built solely to comply with consent decrees or projects mandated by State, Federal, or local governments.
- (g) Election to Allocate Deduction to Cooperative Owner-
 - (1) IN GENERAL - the taxpayer may elect to allocate all or a portion of the deduction allowable under subsection (a) to qualified persons. Such allocation shall be equal to the person's ratable share of the total amount allocated, determined on the basis of the person's ownership interest in the taxpayer. The taxable income of the taxpayer shall not be reduced under section 9 by reason of any amount to which the preceding sentence applies.
 - (2) FORM AND EFFECT OF ELECTION- An election under paragraph (1) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.
 - (3) WRITTEN NOTICE TO OWNERS - If any portion of the deduction available under subsection (a) is allocated to owners under paragraph (1), the cooperative shall provide any owner receiving an allocation written notice of the amount of the allocation. Such notice shall be provided before the date on which the return described in paragraph (2) is due.
- (h) Reporting- No deduction shall be allowed under subsection (a) to any taxpayer for any taxable year unless such taxpayer files with the Director a report containing such information with respect to the operation of the refineries of the taxpayer as the Director shall require.
- (i) Effective Date- The provisions of this subsection shall apply to properties placed in service after the date of the enactment of this Act.

SEC. 9. PASS THROUGH TO OWNERS OF DEDUCTION FOR CAPITAL COSTS INCURRED BY SMALL REFINER COOPERATIVES IN COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS.

- a) Election to Allocate Deduction to Cooperative Owner; Regarding compliance with the Environmental Protection Agency's Sulfur Regulations:
 - (1) IN GENERAL — A refiner who is

- (A) a small business refiner, and or
- (B) one or more persons directly holding an ownership interest in the refiner;

the refiner may elect to allocate all or a portion of the deduction allowable to such persons. Such allocation shall be equal to the person's ratable share of the total amount allocated, determined on the basis of the person's ownership interest in the taxpayer. The taxable income of the refiner shall not be reduced under section 9 by reason of any amount to which the preceding sentence applies.

(2) FORM AND EFFECT OF ELECTION- An election under paragraph (1) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

(3) WRITTEN NOTICE TO OWNERS- If any portion of the deduction available under subsection (a) is allocated to owners under paragraph (1), the cooperative shall provide any owner receiving an allocation written notice of the amount of the allocation. Such notice shall be provided before the date on which the return described in paragraph (2) is due.

(b) Effective Date- The provisions of this subsection shall apply to properties placed in service after the date of the enactment of this Act.

SEC. 10. DETERMINATION OF SMALL REFINER EXCEPTION TO OIL DEPLETION DEDUCTION.

(a) In General - If the taxpayer or one or more related persons engages in the refining of crude oil, subsection (c) shall not apply to the taxpayer for a taxable year if the average daily refinery runs of the taxpayer and such persons for the taxable year exceed 75,000 barrels. For purposes of this paragraph, the average daily refinery runs for any taxable year shall be determined by dividing the aggregate refinery runs for the taxable year by the number of days in the taxable year.

(b) Effective Date - The amendment made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 11. DEFINITIONS.

For the purposes of this subtitle, the term--

- (1) 'Director' means the Director of the Oklahoma Department of Environmental Quality;
- (2) 'Administrator' means the Administrator of the Environmental Protection Agency;
- (3) 'DEQ' means the Oklahoma Department of Environmental Quality;
- (4) 'Federal authorization' means any authorization required under Federal law (including the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Comprehensive Environmental

Response, Compensation, and Liability Act of 1980, the Solid Waste Disposal Act, the Toxic Substances Control Act, the National Historic Preservation Act, and the National Environmental Policy Act of 1969) in order to site, construct, upgrade, or operate a refinery facility within a Refinery Revitalization Zone, including such permits, special use authorizations, certifications, opinions, or other approvals as may be required, whether issued by a Federal, State, or local agency;

(5) 'idle refinery' means any real property site that has been used at any time for a refinery facility since December 31, 1979, that has not been in operation after April 1, 2005;

(6) 'refinery facility' means any facility designed and operated to receive, unload, store, process and refine raw crude oil by any chemical or physical process, including distillation, fluid catalytic cracking, hydrocracking, coking, alkylation, etherification, polymerization, catalytic reforming, isomerization, hydrotreating, blending, and any combination thereof.